

TTAB

07-25-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Trademark

5060-2L

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FOUR SEASONS DAIRY, INC.,

Petitioner,

v.

INTERNATIONAL GOLD STAR
TRADING CORP.,

Registrant.

Cancellation No. 920 42,082

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA. 22202-3513, Box TTAB, on

July 23, 2003

(Date of Deposit)

Roger S. Thomson

Name of Registrant, assignee or Representative

Signature

July 23, 2003

Date of Signature

Box TTAB - No Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

ANSWER TO PETITION FOR CANCELLATION

Registrant, International Gold Star Trading Corp., hereby answers the Petition for Cancellation dated May 29, 2003, filed by the Petitioner, Four Seasons Dairy, Inc., as follows:

1. Registrant admits the allegations of paragraph 1 of the Petition.
2. Registrant denies the allegations of paragraph 2 of the Petition. Registrant alleged a date of first use of the mark of at least as early as September, 1999, not September 31, 1999.
3. Registrant denies having knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 3 of the Petition, and therefore denies the same.
4. Registrant denies having knowledge sufficient to form a belief as to the truth or falsity of

the allegations of paragraph 4 of the Petition, and therefore denies the same.

5. Responding to the allegations of paragraph 5 of the Petition, Registrant admits that Registrant's goods and Petitioner's goods are closely related. Registrant, however, lacks knowledge of the channels of trade in which Petitioner's goods are promoted, and therefore denies that they are the same as those in which the goods of Registrant are promoted. As to the remaining allegations of paragraph 5 of the Petition, Registrant denies that any action it takes could suggest that Registrant is connected in any way to Petitioner, inasmuch as Registrant's rights in and to the mark BABUSHKA'S RECIPE are superior to those of Petitioner in any mark claimed by Petitioner to be confusingly similar to BABUSHKA'S RECIPE.

6. Registrant denies the allegations of paragraph 6 of the Petition.

7. Registrant denies having knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 7 of the Petition, and therefore denies the same.

8. Registrant denies having knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 8 of the Petition, and therefore denies the same.

9. Registrant denies having knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 9 of the Petition, and therefore denies the same.

10. Registrant denies the allegations of paragraph 10 of the Petition.

FIRST DEFENSE

LACK OF STANDING

11. Until such time as Petitioner's trademark application is re-instated and/or re-filed and rejected, Petitioner lacks standing to claim it is or may be damaged by Registrant's registration.

12. Petitioner has also failed to allege it is still using its mark, and therefore, for this reason, as well, has failed to allege facts sufficient to claim standing to bring this Cancellation.

SECOND DEFENSE


SUPERIOR RIGHTS

12. Upon information and belief, Registrant first commenced its use of the mark BABUSHKA'S RECIPE prior to any date from which Petitioner may lawfully claim priority.

WHEREFORE Registrant prays that the Board dismiss the Petition, and deny Petitioner the relief requested in the Petition.

Respectfully submitted,
COHEN, PONTANI, LIEBERMAN & PAVANE

By


Roger S. Thompson
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New York, New York 10176
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Attorneys for Registrant,
International Gold Star Trading Corp.

Dated: July 23, 2003

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Answer in Cancellation Proceeding No. 92042082 entitled *Four Seasons Dairy, Inc. v. International Gold Star Trading Corp.*, was served by first class mail, postage prepaid, on counsel for Petitioner, addressed as follows:

Samuel Friedman, Esq.
225 Broadway, Suite 1804
New York, New York 10007



Roger S. Thompson
Counsel for Registrant

July 23, 2003
Date